



Docket No. JJI-49

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants : Larry B. Gray et al.
Serial No. : 09/665,668 Art Unit: 3731
Filed : September 20, 2000 Examiner: V.Q. Bui
For : AXIALLY FLEXIBLE STENT

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REPLY BRIEF

Dear Sir:

Applicants submit this Reply Brief in response to the Examiner's Answer (Paper No. 19)
filed March 9, 2004.

As an initial remark, the Applicants are somewhat confused by the Examiner's refusal to
enter the Amendment to claim 22. As the Applicants asserted in their Appeal Brief, it was
believed that the amendments to claim 22 would overcome any possible rejection under 35 USC

§ 112, second paragraph. It was believed that such an amendment was necessary because the Examiner so indicated in his note under paragraph 2(c) of the Advisory Action filed October 22, 2003. Accordingly, it was believed that there was a “necessity” for an amendment to the claims. However, considering that this amendment has not been entered *and* the Examiner appears to be working off of the set of claims filed as Amendment “B”, Applicants assume that the present claims do not raise any concerns with respect to 35 USC § 112.

The primary emphasis of this response is to address the Examiner’s misplaced reliance on the Simon patent to reject the claims under 35 USC § 102(b). When examining Simon, it becomes immediately apparent that Simon differs from the present invention *in at least* one significant aspect embodied in both claims 21 and 22. That is, Simon does not disclose wave-shaped struts in the unexpanded configuration. So, regardless of whether there are wave-shaped struts in the expanded configuration, there are certainly no wave-shaped struts in the unexpanded configuration.¹

Thus, when one examines Figure 4 of Simon highlighted by the Examiner, it becomes apparent that when the “struts” labeled S1, S2, 12 and 14, are in the unexpanded configuration, these struts lie parallel to one another on the longitudinal axis of the stent. Accordingly, in the unexpanded configuration there are no “wave-shaped” struts.

¹ The Applicants assert that there are no wave-shaped struts in the expanded configuration as well. The Examiner uses a “trapezoidal wave” as if it were a naturally occurring phenomenon. Of course, since the concept of a trapezoidal wave is only useful in the electrical arts, the Examiner cannot find a trapezoidal wave when characterizing the physical characteristics of a stent. It is particularly enlightening that the Examiner refers to the Nomura reference in order to describe such a trapezoidal wave. Nomura describes a resistance welding machine *in the field of the electrical arts*. But, since it is clear that § 102(b) does not apply based on other grounds, the Applicants have no need to further address this matter.

This differs from the claims substantially. That is, claim 21 describes both an unexpanded and expanded configuration comprising a plurality of longitudinally disposed struts wherein each strut describes a wave along the longitudinal axis. Since there is no wave in Simon in the unexpanded configuration, this element is not met by the Simon reference.

Claim 22 is even more explicit. It reads that in the unexpanded configuration there are “a plurality of longitudinally disposed wave-shaped struts”. Again, since this element is not found in Simon, Simon cannot be useful under 35 USC § 102(b).

Accordingly, Applicants respectfully assert that the Examiner’s own characterization of the Simon reference makes it abundantly clear that Simon does not identically disclose each element of claims 21 or 22. Thus, claims 21 and 22 are in condition for allowance.

Finally, this Reply Brief addresses the Examiner’s statement concerning the Terminal Disclaimer. In the Examiner’s answer, he refers to the papers filed in Serial No. 08/770,236 as improper substitutes for the Declaration and Associate Power of Attorney filed in this application, Serial No. 09/665,668. However, the Declaration and Power of Attorney filed in the present application *are in fact* the Declaration and Power of Attorney filed in Serial No. 08/770,236, the parent to this application. The Declaration and the Associate Power of Attorney are *identical* to those filed in the present application. Accordingly, Applicants’ attorney (listed as an Associate Attorney on Serial No. 08/770,236) is clearly authorized to file the Terminal Disclaimer in this application Serial No. 09/665,668. The Examiner’s misplaced reliance on the Power of Attorney as if it was newly filed in the present application is simply in error. At a minimum, this rejection should be removed.

For all the above reasons, it is again asserted that the claims are in condition for allowance. At a minimum, the Examiner should remove the final rejection and reopen prosecution in this application.

Respectfully submitted,

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